IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17385 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALUBHA RAHUBHA VAGHELA - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :

MRS MADHUBEN SHARMA for Petitioner(s) : 1,MEENA VYAS for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MRS HANSA PUNANI AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 11/10/2005

ORAL JUDGMENT

1. By this petition under Article 226 of the Constitution of India, the order dated 2/8/2005 passed by respondent no.2, the District Magistrate, is challenged

on the ground that the exercise of power under Sub-section (2) of Section 3 is not reasonable and contrary to the mandate of Constitutional requirement as guaranteed under the fundamental rights and violative of Article 14, 19, 21 and 22 of the Constitution of India.

2. The detenu who is detained as a bootlegger as defined by Section 2(b) of the Act was supplied with the grounds on the very same date along with the order of detention, which reflect registration of crime vide C.R. No. 199/05 dated 10/6/2005 at Sanand Police Station for the offence punishable under Section 66(b), 65(e) and 81 of Bombay Prohibition Act, 1949. The concerned authority has also recorded the statement of three witnesses dated 7/7/2005 before the concerned police officer which narrates about illegal and criminal activities of the detenu of indulging into usage of abusive language, showing weapons and even trying to extort money from the said witnesses. Thus, the activities of the detenu were considered to be prejudicial to the maintenance of public order and, therefore, the order of detention was passed.

3. The learned advocate for the petitioner has

submitted that registration of various offence under the Bombay Prohibition Act, 1949, in absence of any relevant or credible material about illegal activities carried out by the detenu, has bearing or nexus with the disturbance of public order, the power under Section 3(2) cannot be exercised and order detaining the petitioner as a bootlegger as defined under Section 2(b) of the Act is not warranted and the order of detention impugned in this petition, requires to be quashed and set aside.

4. The learned AGP Mrs. Hansa Punani has submitted that the activities of the detenu are prejudicial and satisfaction of the detaining authority is based on relative factors of registration of crimes and other anticidents of the detenu and, therefore, the order of detention is to be upheld.

5.Having considered the rival submissions and after perusal of the record of the case, I do not find any relevance in the order of detention, in the factual backdrops narrated therein, about prejudicial activities of the detenu which can disturb the public order or general health of the public. The decision of the learned Single Judge dated 26/2/2004 in Special Civil

Application No. 16542/03 has elaborately discussed the reported decisions in **Kanuji S. Zala vs. State of Gujarat and Ors. Reported in 2000(4) GLR 3256** and also **Om Prakash Vs. Commissioner of Police reported in AIR 1990 Sc 496** and another decision of **Piyush Kantilal Mehta vs. Commissioner of Police reported in AIR 1989 Sc 491**. After elaborate discussion of the above mentioned authorities and case laws in paragraph 13 and 14 the learned Single Judge has observed as under:

> 13.The case before the Supreme Court was argued from the aspect of adverse effect of bootlegging activity of detenu on the pubic health. It has been clearly suggested from the observations made in para 5 that while dealing with the cases under Sections 3 and 3(4) of the PASA Act where the persons is aleged to have been indulging in the bootlegging activities, the presence of credible material before the detaining authority has been insisted upon. Thus, reading the judgment as a whole in the case of Kanuji S. Zala (Supra) in cases under Section 3 (4) of the PASA Act where the persons has been indulging in the bootlegging activities over and above the activities alleged, what is required to be considered or what has been insisted upon by the Supreme Court in such cases i.e. cases under Section 3(4)of the PASA Act on the allegations of bootlegging there has to be credible material before the detaining authority on the basis of which reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. Thus, reading the judgment as a whole, it does not appear that in cases under Section 3(4) only bootlegging activities by the petitioner would be sufficient. But, while dealing with to be credible material on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity on

the maintenance of public order.

> 14. In the instant case, except the statement in Ground No.3 as referred to above, there is no credible material before the detaining authority on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity of the detenu on the maintenance of public order. In the case of Kanuji S. Zala (supra) as observed in para 4 that statement of witnesses before the detaining authority clearly showed that the even tempo of public life was disturbed in t hose localities for some time and the material on record also showed that members of the public of those locality had to run away from there or to go inside their houses and closed their doors and in light of this evidence, the Supreme Court held that it cannot be said that the satisfaction of the District Magistrate in this behalf was not reasonable or no such material in the present case appears to have been placed before detaining authority so as to draw a reasonable inference as regards the adverse effect on the maintenance of public order.

6. In view of the above settled position of law in the facts of the present case also the order of detention impugned in this petition did not reflect the prejudicial activities of the detenu being in nexus or bearing on disturbance of public order or general health of pubic and therefore, the detention order dated 2/8/2005 is quashed and set aside. The detenu, Lalubha Rahubha Vaghela is ordered to be set at liberty forthwith if he is not required in connection with any other case.

7. Rule is made absolute accordingly. Direct Service is permitted.

(Anant S. Dave, J.)

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